

# Open Research Online

---

The Open University's repository of research publications and other research outputs

## The role of the Commonwealth and Commonwealth Associations in strengthening administrative law and justice

### Journal Item

#### How to cite:

Slapper, Gary and Hatchard, John (2006). The role of the Commonwealth and Commonwealth Associations in strengthening administrative law and justice. *Acta Juridica*, 2006 pp. 405–423.

For guidance on citations see [FAQs](#).

© Gary Slapper and John Hatchard

Version: Version of Record

Link(s) to article on publisher's website:

[http://www.jutalaw.co.za/catalogue/itemdisplay.jsp?item\\_id=8370](http://www.jutalaw.co.za/catalogue/itemdisplay.jsp?item_id=8370)

---

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online's data [policy](#) on reuse of materials please consult the policies page.

---

[oro.open.ac.uk](http://oro.open.ac.uk)

# HEINONLINE

Citation: 2006 Acta Juridica 405 2006

Content downloaded/printed from  
HeinOnline (<http://heinonline.org>)  
Wed Apr 7 10:30:50 2010

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?  
&operation=go&searchType=0  
&lastSearch=simple&all=on&titleOrStdNo=0065-1346](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0065-1346)

# *The Role of the Commonwealth and Commonwealth Associations in Strengthening Administrative Law and Justice*

JOHN HATCHARD\* and GARY SLAPPER\*\*  
*The Open University, UK*

---

This paper focuses on the role of the Commonwealth and Commonwealth associations, and in particular the Commonwealth Legal Education Association, in strengthening administrative law and justice. It is divided into two parts. Part 1 explores the work being done within the Commonwealth that is designed to support and enhance administrative law and justice. In doing so, it examines recent Commonwealth initiatives, including the Latimer House Guidelines and the Commonwealth Principles. Part 2 then argues that law teachers have a key role to play in supporting these initiatives and examines mechanisms for supporting and strengthening the teaching of, and research on, administrative law and justice in Commonwealth law schools.

## I THE COMMONWEALTH, THE COMMONWEALTH LEGAL EDUCATION ASSOCIATION AND ADMINISTRATIVE LAW AND JUSTICE

The Commonwealth is the largest association of independent states after the United Nations. Its 53 independent member countries, with a total population estimated at some two billion, span all major political groupings, regions and economic zones and comprise some of the largest (eg. India) and smallest (eg. Nauru) countries in the world, as well as some of poorest and some of the richest. It embraces major parts of Africa and Asia, almost all of the Caribbean and much of the Pacific and Australasia, as well as having members in Europe and America. It also contains a high proportion of small states, whose interests the Commonwealth is particularly anxious to strengthen and protect. It embraces a variety of different political systems, but all member states acknowledge the British Queen as Head of the Commonwealth.<sup>1</sup>

\* Professor of Law at The Open University and Secretary General of the Commonwealth Legal Education Association.

\*\* Professor of Law and Director of the Centre for Law, The Open University, UK.

<sup>1</sup> The 1971 Declaration of Commonwealth Principles puts it as follows: 'The Commonwealth of Nations is a voluntary association of independent sovereign States. . . . Members of

As the 1991 Harare Commonwealth Declaration puts it:

The special strength of the Commonwealth lies in the combination of the diversity of its members with their shared inheritance in language, culture and the rule of law. The Commonwealth way is to seek consensus through consultation and the sharing of experience. It is uniquely placed to serve as a model and as a catalyst for new forms of friendship and co-operation to all in the spirit of the Charter of the United Nations.

In the constitutional and legal field, Commonwealth countries have much in common:

- (1) *A common language*: Whilst the people of the Commonwealth speak many languages, they communicate with each other through the shared language of English. As a result, their written laws and decisions of their superior courts are almost invariably available in English.
- (2) *A common legal heritage*: The laws and legal system of the vast majority of Commonwealth states are based on the English common-law tradition. Countries with other legal traditions also often make extensive use of common-law principles in areas such as administrative law and criminal justice.
- (3) *Common constitutional principles*: The Westminster model constitution was used as the basis for the independence constitutions of many Commonwealth member states. This commonality has encouraged courts to share jurisprudence on constitutional matters and to develop common principles of constitutional interpretation.
- (4) *Common legal challenges*: There is an enormous amount of co-operation between Commonwealth countries on a range of legal issues, for example, through the development and use of the various Commonwealth schemes on international co-operation in criminal matters.<sup>2</sup>

The result is that for Commonwealth law teachers, there is a wealth of comparative Commonwealth jurisprudence that is of enormous value for teaching and research purposes. Here the challenge often is to find ways of ensuring that this material is readily available to all law schools. This is discussed below.

As well as what one might call the 'Official Commonwealth', there are a number of Commonwealth associations. In the field of legal and

the Commonwealth come from territories in the six continents and five oceans, include people of different races, languages and religions, and display every stage of economic development, from poor developing nations to wealthy industrialised nations.'

<sup>2</sup> In particular, the Harare Scheme on Mutual Legal Assistance in Criminal Matters and the London Scheme on Extradition of Fugitive Offenders.

constitutional affairs, the Commonwealth has three main partner bodies: the Commonwealth Legal Education Association (CLEA), the Commonwealth Lawyers' Association (CLA) and the Commonwealth Magistrates' and Judges' Association (CMJA).

The role of the CLEA merits particular attention here. Founded in 1971, the role of the Association is to foster and promote high standards of legal education in the Commonwealth. Members of the Association have an input into policy-making, are involved in the development of model laws and provide papers for (and attend) Meetings of Senior Officials and Commonwealth Law Ministers.<sup>3</sup>

Regarding administrative law and justice, much has changed since 1935, when Lord Hewart, then Lord Chief Justice of England, dismissed the term 'administrative law' as 'Continental jargon'.

Over the years, the Commonwealth has developed a series of Declarations that enshrine the CLEA's core beliefs. The first of these was the *Declaration of Commonwealth Principles* adopted by Commonwealth Heads of Government at their 1971 meeting in Singapore. This Declaration notes that:

We believe in the liberty of the individual, in equal rights for all citizens regardless of race, colour, creed or political belief, and in their inalienable right to participate by means of free and democratic political processes in framing the society in which they live. We therefore strive to promote in each of our countries those representative institutions and guarantees for personal freedom under the law that are our common heritage.

After the dramatic international political and constitutional changes of the late 1980s, the Commonwealth Heads of Government adopted the *Harare Commonwealth Declaration* at their 1991 Meeting in Zimbabwe. This not only re-affirmed their commitment to the 1971 *Declaration of Commonwealth Principles* but also sought to set out the Association's priorities based on two themes: sustainable economic development and the promotion of the Commonwealth's fundamental political values – democracy, the rule of law and human rights. As regards the latter, the key parts of the Declaration are as follows:

Having reaffirmed the principles to which the Commonwealth is committed, and reviewed the problems and challenges which the world, and the Commonwealth as part of it, face, we pledge the Commonwealth and our countries to work with renewed vigour, concentrating especially in the following areas:

- the protection and promotion of the fundamental political values of the Commonwealth:

<sup>3</sup> For full details see the CLEA website: [www.cleasonline.org](http://www.cleasonline.org).

- democracy, democratic processes and institutions which reflect national circumstances, the rule of law and independence of the judiciary, just and honest government;
- fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief;
- equality for women, so that they may exercise their full and equal rights,
- provision of universal access to education for the population of our countries. . . .

This is the key to the commitment of the Commonwealth to administrative law and justice. This commitment has been translated into practice through the development of, amongst other things, a series of Commonwealth-wide initiatives on good government. For example, after the Harare meeting, the Commonwealth Secretariat was mandated to commence a programme 'for raising awareness of the relevance of administrative law to issues of governmental and political development'.<sup>4</sup> This led to a series of pan-Commonwealth workshops that brought together those holding office in government and the public service, as well as judges, the legal profession, academic lawyers and representatives of the media.<sup>5</sup>

At the first of these workshops held in Zambia in 1992, the *Lusaka Statement on Government under the Law* was developed. This includes a series of 'Guiding Principles' that reflect good administrative practice.<sup>6</sup> What was significant was the recognition that good administrative practice does not just happen, but that proper procedures are needed to enable them to function properly. As the *Lusaka Statement* asserts, it is essential that:

- the Executive ensures that senior civil servants enjoy appropriate security of tenure and have a full appreciation of, and are encouraged to discharge, their own responsibilities for good administrative practice, and of the proper role of the Judiciary;
- senior civil servants ensure that their own staff receive appropriate training and guidance in good administrative practice and the basic requirements of administrative law, so as to ensure that best administrative practice is followed and that the room for individual citizens to feel aggrieved is minimised;
- the Judiciary be well-versed in the judicial review of administrative action (including, if need be, the establishment of a Division within the High Court comprising specialist judges) and be adequately

<sup>4</sup> Commonwealth Secretariat *Good Government and Administrative Law: An Introductory Guide* (1996) vii.

<sup>5</sup> Ibid at vii.

<sup>6</sup> The Statement is reproduced at the end of this article.

resourced with up-to-date legal materials, including promptly produced law reports;

- the legal profession be equipped both through proper training in law faculties and through continuing legal education programmes to discharge their own vital function in preparing cases that should be brought before the courts for consideration;
- the general public be informed – and be kept informed – of their rights and of fact that the law can provide redress in cases of arbitrary, discriminatory and unfair administrative action by government, and be assured of appropriate access to legal aid; and
- the legal procedures for judicial review of administrative action be reviewed, and kept under regular review, to ensure that it meets the expectations of society and reflects best prevailing Commonwealth practices.

Thus whilst the development of administrative justice is a given, there is also the need to (i) strengthen and develop appropriate institutions to promote and support it; (ii) provide training for key players (and here note the important role of law schools); and (iii) address the often fraught relationship between the various arms of government. A series of workshops have been held around the Commonwealth at which these issues were discussed within a national and regional agenda. Judicial colloquia on the domestic application of international human rights norms have also been held from time to time, the first in 1988 in Bangalore, India.

The Bangalore Principles, developed at the meeting, have had an enormous influence on encouraging judges, practitioners and law teachers in many Commonwealth jurisdictions to make use of the rich body of international and comparative Commonwealth human rights and administrative law.<sup>7</sup>

The role of Commonwealth law teachers to disseminate this jurisprudence is also clearly recognised. As para 14 of the Georgetown Conclusions states:

There is a need for courses in law schools and other institutions of learning to educate the next generation of judges, administrators and lawyers in human rights [and administrative justice] jurisprudence. The urgent necessity remains to bring the principles of human rights into the daily activities of government and public officials alike, and for ordinary men and women. In this way a global culture of respect for human rights can be fostered.

The next major initiative was the Latimer House Process, started in 1998. Its genesis lay in the shared concern about the effective

<sup>7</sup> These are available on the Commonwealth's web site: [www.thecommonwealth.org](http://www.thecommonwealth.org).

implementation of the just and honest governance agenda embodied in the Harare Declaration. Thus the overall object of the process was to adopt draft guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights.

The need for a new kind of Commonwealth gathering was identified: one quite distinct from training workshops, academic conferences and deliberations within the confines of each professional grouping. Rather the object was to bring together, for the first time at a senior level, parliamentarians, including those holding ministerial office, judges, legal practitioners and legal academics with the object of not only promoting dialogue between those at the cutting edge of good governance issues, but with the specific aim of drafting guidelines as to best practice with regard to the relations between the executive, legislature and judiciary in the context of the Harare Declaration.

In the event, over 60 senior judges, parliamentarians, legal academics and legal practitioners representing 20 Commonwealth countries and three overseas territories attended the Joint Colloquium at Latimer House, United Kingdom in June 1988. The outcome was the adoption of the Latimer House Guidelines (LHG),<sup>8</sup> which provide an 'operational manual of good practice which can be considered for implementation in every Commonwealth jurisdiction'.<sup>9</sup>

The Guidelines deal with issues that include: Parliament and the Judiciary; Preserving judicial independence; Preserving the independence of parliamentarians; Judicial and parliamentary ethics; and Executive accountability, including the fact that 'Commonwealth governments should endorse and implement the principles of judicial review enshrined in the Lusaka Statement on Government under the Law'.<sup>10</sup>

After further deliberation, the *Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government* were fully endorsed by the Commonwealth Heads of Government at their 2003 Meeting in Abuja, Nigeria. The Principles recognise that:

Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good

<sup>8</sup> 'Guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles'.

<sup>9</sup> It is not possible in this paper to discuss the Guidelines themselves. For this discussion, see John Hatchard and Peter Slinn (eds) *Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach* (1999).

<sup>10</sup> Section VI(2)(b) of the Guidelines.



governance based on the highest standards of honesty, probity and accountability.<sup>11</sup>

Particularly strong are the provisions relating to executive accountability and the oversight of government. Here judicial review is seen as a cornerstone:

Best democratic principles require that the actions of governments are open to scrutiny by the courts, to ensure that decisions taken comply with the Constitution, with relevant statutes and other law, including the law relating to the principles of natural justice.<sup>12</sup>

It is beyond the scope of this paper to analyse the Commonwealth Principles. However, they are now being used as a springboard for further Commonwealth action, the objectives of which are:

- to raise awareness amongst parliamentarians, government ministers and officials, judges and magistrates, lawyers, civil society and oversight institutions, on the implementation of the Commonwealth Principles;
- to facilitate the exchange of ideas and sharing of experiences to enhance practices of accountable, ethical and effective governance;
- to examine and exchange ideas on ways of strengthening the independence of parliamentarians and the judiciary;
- to examine ways of strengthening and reforming institutions in the fight against corruption;
- to encourage and explore new ideas for sustaining governance to reduce poverty and promote human rights and gender equality
- to encourage strategic partnerships between government and civil society in promoting and protecting ethical governance, accountability and the rule of law.

Overall, whilst it is difficult to judge objectively the 'effectiveness' of this work, the projects highlight the contribution that the Commonwealth and Commonwealth associations can make in supporting and developing administrative law and justice. In doing so, they have laid down the ground rules by which every Commonwealth member state can be judged.<sup>13</sup>

It is appropriate in this context to review the role that law teachers can play and the benefits they can derive from involvement with such Commonwealth initiatives.

<sup>11</sup> Section I of the Commonwealth Principles. These are reproduced at the end of this article.

<sup>12</sup> Section VII(c) of the Commonwealth Principles.

<sup>13</sup> Indeed it was the failure of the Zimbabwean government to honour its commitments enshrined in the Harare Commonwealth Declaration to other Commonwealth member states that led to the eventual withdrawal of Zimbabwe from the Commonwealth.

## II DEVELOPING ADMINISTRATIVE LAW AND JUSTICE, TEACHING, AND RESEARCH IN THE COMMONWEALTH

The CLEA's Programme of Action is designed to achieve sustainable improvement in legal education throughout the Commonwealth. This is a challenging task given the considerable variation in staffing and resources available to law schools. Nevertheless, the goal is to seek to ensure that law students, wherever they may be, enjoy the highest standard of legal education that is socially relevant and professionally useful.

Some ways of supporting the teaching of, and the researching on, administrative law and justice, particularly in developing Commonwealth countries, are now explored.

### (1) *Developing teaching materials on administrative law/justice in the Commonwealth*

It should be no surprise to any Commonwealth law teacher that invaluable jurisprudence and other materials on these topics can be obtained from around the Commonwealth, including small and/or developing member states.<sup>14</sup> It is therefore essential that ways are found to encourage the development of teaching materials and the sharing of this information amongst Commonwealth law teachers.

#### (a) *Disseminating teaching and research materials*

Much material is already available electronically (and free of charge) through outstanding web sites such as World Legal Information Institute (WorldLII)<sup>15</sup> and the like. One problem is that of accessibility. Whilst access to the internet is becoming increasingly commonplace, the fact is that there are still a significant number of Commonwealth law schools that do not have access, or at least reliable access, to electronic materials. Thus we still need to consider other methods of disseminating information. One possibility is to make greater use of *Commonwealth Legal Education*, the thrice-yearly publication of the CLEA that is sent (free of charge) to all known Commonwealth law schools and law libraries. For example, a regular feature on 'Developments in administrative law and justice' would be a possibility. The CLEA's own refereed journal, the *Journal of Commonwealth Law and Legal Education (JCLLE)* is also available for the publication of a wide range of articles and notes.

At present there seems to be no focal point for the co-ordination and dissemination of Commonwealth materials on administrative law and

<sup>14</sup> For excellent examples, see the *Law Reports of the Commonwealth*.

<sup>15</sup> See [www.worldlii.org](http://www.worldlii.org).

justice to law schools. Perhaps a Commonwealth law school (in conjunction with the CLEA) might consider taking on a co-ordination/dissemination role in this respect.

*(b) Developing a curriculum on administrative law and justice*

The CLEA curriculum development project is based on the recognition that the curricula in many Commonwealth law schools are, for a variety of reasons, outmoded and outdated. This project therefore seeks to assist law teachers in developing up-to-date curricula on key subjects and topics for the 21st century law student. Further, the materials are readily adaptable for use in other types of training courses and for other types of students.

*(2) Encouraging/facilitating research and publications*

The need to encourage and facilitate research and publishing, particularly in many developing Commonwealth countries, remains a high priority. Time constraints and lack of access to appropriate materials are often seen as key inhibiting factors here, but publishing research and teaching materials is also a considerable problem.

The CLEA has recently established its own law publication programme using print on demand (POD). This enables the Association to offer low-cost publishing both in terms of unit cost and the number of copies of a book that need be ordered at any one time. Further, provided the manuscript is in an acceptable digital format (although it can also be scanned), the book can be produced within a few days. Thus, for example, it is quite possible to order a print run of 20 copies of a particular book for delivery within a week (or even more quickly). If further copies are required, these can be produced equally quickly and cheaply. Further, the book can be readily updated from time to time and reprinted in equally small numbers.

POD offers an opportunity for Commonwealth law schools, particularly those with significant financial constraints, to have access to high-quality, up-to-date books and other materials cheaply and swiftly.<sup>16</sup> The CLEA is able to provide the means of doing so, although it would also be happy to join with university publishing houses in undertaking joint publishing ventures.

### III CONCLUSION

Many obstacles need to be addressed if the 'good governance' goals described above are to be achieved: particularly for those in developing

<sup>16</sup> These publications can also be used to generate additional income for the law school through the establishment of a partnership with international law publishers. This is already the case between the CLEA and Thomson: Sweet & Maxwell.

Commonwealth states. Yet some of the tools are at hand to make this a reality and this paper has sought to provide some ideas as to the way forward.

## THE LUSAKA STATEMENT ON GOVERNMENT UNDER THE LAW

MEMBERS of the Government of the Republic of Zambia, the judiciary and the civil service, meeting in Lusaka on 15 October 1992 together with members of the legal profession, the media and the wider public at the conclusion of a three-day seminar organised by the Commonwealth Secretariat, adopted the following statement:

WE express our joint belief in the central place enjoyed by an independent, impartial and informed judiciary in the realisation of just, honest, open and accountable government. These are the hallmarks of the democratic society which our people are guaranteed by our Constitution, and which our people are entitled to expect.

WE believe that it is entirely consistent with best democratic practices for the actions of governments to be scrutinised by the courts at the instance of citizens, to ensure that decisions taken and administrative practices followed comply in all respects with the Constitution, with relevant statute and other law, and with best administrative practices – namely that administrative decisions be taken fairly, reasonably and according to law. In developing our jurisprudence in this area, the fundamental human rights provisions of our Constitution are of particular importance.

BY providing for judicial review of administrative action, the law provides not only a means for citizens to seek redress where they believe they have a grievance against official action, but also for them thereby' actively to promote good administrative practice. In the non-judicial sphere the office of the Investigator-General also plays a most important role.

THE essential requirements of administrative law are that administrative action be confined to areas authorised by the law; that the rules of natural justice be followed; that each case be dealt with on its merits and without taking account of extraneous factors; that similar cases be treated in the same way; and that persons taking decisions should not have any personal or other interest in the outcome.

THE following principles reflect good administrative practice and in many instances are enforceable through the courts:

### GUIDING PRINCIPLES

An administrative authority, when exercising a discretionary power should:

1. *Pursue only the purposes for which the power has been conferred;*
2. *Be without bias and observe objectivity and impartiality, taking into account only factors relevant to the particular case;*

3. *Observe the principle of equality before the law by avoiding unfair discrimination;*
4. *Maintain a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purpose which it pursues;*
5. *Take decisions within a time which is reasonable having regard to the matters at stake;*
6. *Apply any general administrative guidelines in a consistent manner while at the same time taking account of the particular circumstances of each case.*

#### *Procedure*

7. *Availability of guidelines:* *Any general administrative guidelines which govern the exercise of a discretionary power should either be made public or communicated (in an appropriate manner and to the extent necessary) to the person concerned at his or her request, whether before or after the taking of an act concerning the person;*
8. *Right to be heard:* *In respect of any administrative act of such a nature as is likely to affect adversely his or her rights, liberties or interests, the person concerned should be entitled to put forward facts and arguments and, in appropriate cases, submit evidence which should be taken into account by the administrative authority; in appropriate cases the person concerned should be informed, in due time and in an appropriate manner, of these rights;*
9. *Access to information:* *Upon request, the person concerned should be informed, before an administrative act is taken and by appropriate means, of all factors relevant to the taking of that act;*
10. *Statement of reasons:* *Where an administrative act is of such a nature as to affect adversely the rights, liberties or interests of a person, the person concerned should be informed of the reasons on which it is based either by stating the reasons in the act itself or, upon request, by communicating them separately to the person concerned within a reasonable time;*
11. *Indication of remedies:* *Where an administrative act is given in writing and which adversely affects the rights, liberties or interests of the person concerned, it should indicate the specific remedies available to the person as well as any time-limits which may be involved.*

#### *Review*

12. *An act taken in exercise of a discretionary power should be subject to judicial review by a court or other competent body; however this does not exclude the possibility of a preliminary review by an administrative authority empowered to decide both on legality and on the merits;*
13. *Where no time limits for the taking of a decision in exercise of a discretionary power have been set by law and the administrative authority does not take its decision within a reasonable time, its failure to do so should be open to review by a competent authority;*

14. *A court or other independent body which controls the exercise of a discretionary power should possess such powers of obtaining information as are necessary for the proper exercise of its functions.*

#### *Implementation*

15. *In their implementation, the requirements of good and efficient administration, the legitimate interests of third parties and major public interests should be given due weight, but where these requirements make it necessary to modify these principles in particular cases or specific areas of public administration, every endeavour should be made to conform with these principles and to achieve the highest possible degree of fairness.*

ADMINISTRATIVE law in these and other ways provides a firm basis for the guidance of ministers of government and civil servants in the discharge of their duties. By upholding these principles, the judiciary serves the public interest, not only in specific cases but by providing both guidelines for future administration and remedies where these are appropriate and proper procedures have not been followed. There is thus a creative tension between two branches of government – the executive and the judiciary – which endures to the public benefit. While it lies to the government to make and execute policy, it rests with the judiciary to ensure that policies are both made and implemented within the parameters prescribed by our Constitution and by our country's laws, and for its decisions in these as in other matters to be respected.

HOWEVER the judiciary has a broader role than this. In a democracy, the people can exercise their franchise only periodically and are empowered to remove from office those who fail to honour the trust and responsibility reposed in them. On a daily basis, it falls to the judiciary no less than to members of the legislature to hold the executive accountable under the Rule of Law, and to ensure (on the people's behalf) that government takes place on a constitutional basis and under the law. This includes ensuring that minorities and minority interests are protected under the law, for although the government is chosen by the majority, it must, in a democracy, rule for all.

FOR such procedures to function properly it is essential that:

- the executive ensures that senior civil servants enjoy appropriate security of tenure and have a full appreciation of, and are encouraged to discharge, their own responsibilities for good administrative practice, and of the proper role of the judiciary;
- senior civil servants ensure that their own staff receive appropriate training and guidance in good administrative practice and the basic requirements of administrative law, so as to ensure that best administrative practice is followed and that the room for individual citizens to feel aggrieved is minimised;

- the judiciary be well-versed in the judicial review of administrative action (including, if need be, the establishment of a Division within the High Court comprising specialist judges) and be adequately resourced with up-to-date legal materials, including promptly produced law reports;
- the legal profession be equipped both through proper training in law faculties and through continuing legal education programmes to discharge their own vital function in preparing cases that should be brought before the courts for consideration;
- the general public be informed – and be kept informed – of their rights and of fact that the law can provide redress in cases of arbitrary, discriminatory and unfair administrative action by government, and be assured of appropriate access to legal aid; and
- the legal procedures for judicial review of administrative action be reviewed, and kept under regular review, to ensure that it meets the expectations of society and reflects best prevailing Commonwealth practices.

IT IS OUR belief that if the above programme of action can be implemented effectively, the quality of administration will be consistently improved and sustained, to the ultimate betterment of the lives of all our citizens. We therefore solemnly pledge ourselves to its fulfilment and urge others who may have a part to play to join us. Our people are entitled to no less.

*Lusaka, Zambia*

15 October 1992



## COMMONWEALTH PRINCIPLES ON THE ACCOUNTABILITY OF AND THE RELATIONSHIP BETWEEN THE THREE BRANCHES OF GOVERNMENT

Commonwealth Heads of Government warmly welcome the contribution made by the Commonwealth Parliamentary Association and the legal profession of the Commonwealth represented by the Commonwealth Magistrates and Judges Association, the Commonwealth Lawyers Association and the Commonwealth Legal Education Association to further the Commonwealth Harare Principles.

They acknowledge the value of the work of these Associations to develop the Latimer House Guidelines and resolve, in the spirit of those Guidelines, to adopt the COMMONWEALTH PRINCIPLES ON THE ACCOUNTABILITY OF AND THE RELATIONSHIP BETWEEN THE THREE BRANCHES OF GOVERNMENT.

### Objective

The objective of these Principles is to provide, in accordance with the laws and customs of each Commonwealth country, an effective framework for the implementation by governments, parliaments and judiciaries of the Commonwealth's fundamental values.

### I The Three Branches of Government

Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.

### II Parliament and the Judiciary

- (a) Relations between parliament and the judiciary should be governed by respect for parliament's primary responsibility for law making on the one hand and for the judiciary's responsibility for the interpretation and application of the law on the other hand.
- (b) Judiciaries and parliaments should fulfill their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.

### III Independence of Parliamentarians

- (a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.
- (b) Criminal and defamation laws should not be used to restrict legitimate criticism of Parliament; the offence of contempt of

parliament should be narrowly drawn and reporting of the proceedings of parliament should not be unduly restricted by narrow application of the defence of qualified privilege.

#### IV Independence of the Judiciary

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.

To secure these aims:

- (a) Judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process. The process should ensure: –
  - *equality of opportunity for all who are eligible for judicial office;*
  - *appointment on merit; and*
  - *that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination;*
- (b) Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place;
- (c) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;
- (d) Interaction, if any, between the executive and the judiciary should not compromise judicial independence.

Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties.

Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner.

An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.

#### V Public Office Holders

- (a) Merit and proven integrity, should be the criteria of eligibility for appointment to public office;
- (b) Subject to (a), measures may be taken, where possible and appropriate, to ensure that the holders of all public offices generally

reflect the composition of the community in terms of gender, ethnicity, social and religious groups and regional balance.

## VI Ethical Governance

Ministers, Members of Parliament, Judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence.

## VII Accountability Mechanisms

### (a) Executive Accountability to Parliament

Parliaments and governments should maintain high standards of accountability, transparency and responsibility in the conduct of all public business.

Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the executive to Parliament.

### (b) Judicial Accountability

Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible government relies.

In addition to providing proper procedures for the removal of judges on grounds of incapacity or misbehaviour that are required to support the principle of independence of the judiciary, any disciplinary procedures should be fairly and objectively administered. Disciplinary proceedings which might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness.

The criminal law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions.

### (c) Judicial review

Best democratic principles require that the actions of governments are open to scrutiny by the courts, to ensure that decisions taken comply with the Constitution, with relevant statutes and other law, including the law relating to the principles of natural justice.

## VIII The law making process

In order to enhance the effectiveness of law making as an essential element of the good governance agenda:

- There should be adequate parliamentary examination of proposed legislation;
- Where appropriate, opportunity should be given for public input into the legislative process;
- Parliaments should, where relevant, be given the opportunity to consider international instruments or regional conventions agreed to by governments.

## IX Oversight of Government

The promotion of zero-tolerance for corruption is vital to good governance. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process.

Steps which may be taken to encourage public sector accountability include:

- (a) The establishment of scrutiny bodies and mechanisms to oversee Government, enhances public confidence in the integrity and acceptability of government's activities. Independent bodies such as Public Accounts Committees, Ombudsmen, Human Rights Commissions, Auditors-General, Anti-corruption commissions, Information Commissioners and similar oversight institutions can play a key role in enhancing public awareness of good governance and rule of law issues. Governments are encouraged to establish or enhance appropriate oversight bodies in accordance with national circumstances,
- (b) Government's transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs.

## X Civil Society

Parliaments and governments should recognise the role that civil society plays in the implementation of the Commonwealth's fundamental values and should strive for a constructive relationship with civil society to ensure that there is broader opportunity for lawful participation in the democratic process.

*November 11, 2003*